

## **Chapter 1**

### **PROGRAM LEADERSHIP**

#### **Introduction**

This chapter includes Study recommendations that require action by the Superfund Program's senior leadership across Headquarter's offices and the Regions. Some of these recommendations have already been implemented, such as the creation of a Superfund Board of Directors and development of the Superfund Board of Director's Charter outlining the hierarchy of Program goals to help direct resources. The recommendations in this chapter represent the strategic decision-making and actions that are needed to help address the resource issues currently faced by the Superfund Program, and to make the Superfund Program more efficient.

The recommendations under Program Leadership fall into four subcategories: (1) Program Direction; (2) Program Policy and Guidance; (3) Performance Measurement/Accountability; and (4) Homeland Security/Nationally Significant Incidents.

#### **1.1 PROGRAM DIRECTION**

##### **Background:**

The recommendations in this section address senior leadership initiatives, such as setting clear goals and directing research efforts to more closely meet Program needs and to help focus activities in the Superfund Program. The success of the Program has been and continues to be dependent upon the partnership and collaboration of many of the Agency offices and all of the Regions. The recommendations below are intended to help strengthen this partnership and positively impact all offices that have Superfund responsibilities and resources.

The Study identified a need for greater overall Program coordination and integration of the efforts among the various offices (including the Regions) with Superfund responsibilities. With resources spread broadly across multiple EPA Headquarters offices and the Regions, efforts end up less focused and less mutually supportive than they could be because different parts of the organization see themselves as beholden to their own program areas, rather than as responsible for achieving overarching programmatic goals and mandates.

To address cross-office issues more effectively, the Study Team recommended the creation of an overarching internal Superfund Board of Directors to provide enhanced Program leadership, coordination, and accountability. In addition, with the growing complexity of the Program coupled with the tightening of resources, the Office of Solid Waste and Emergency Response (OSWER) needs to more clearly articulate the hierarchy of cleanup goals. The Study Team determined that senior leadership needs to more finely hone the Program's goals and more clearly articulate the relative priority among those goals.

Cost recovery is another critical Agency activity. Without this work, no funds spent by the Program for removal or remedial actions would be returned to the Trust Fund to defray the costs of future work. Senior leadership should affirm its commitment to cost recovery to emphasize its importance to the Superfund Program.

Finally, while OSWER and the Office of Research and Development (ORD) are undertaking efforts to improve the effectiveness of the Superfund research program (including addressing many of the observations and recommendations in the Study), and OSWER and the lead Region representatives felt there is an effective planning process in place at ORD, there are problems with incorporating Regional needs and a disconnect between the planning process and communicating results to Superfund practitioners. Although technical support requests are addressed in a timely manner, there are significant concerns about the utility of ORD's longer-term research program in supporting cleanup operations. Discussions indicated that longer-term Superfund research activities and priorities are not as clearly identified or as closely linked with the needs of Regional management as they could or should be, and there is a real need for better communication among ORD, OSWER, and Regional management.

### **Recommendations and Actions:**

**Key - Recommendation 1: Create Superfund Board of Directors.** The Deputy Administrator should create a Superfund Board of Directors to improve Program coordination, integration, and accountability.

**Action:** EPA established a Superfund Board of Directors in May 2004; the final Superfund Board of Director's Charter was distributed in June 2004. *(BOD – Completed)*

**Key - Recommendation 2: Develop Hierarchy of Program Goals.** Senior Program managers should evaluate the Program's current goals and objectives and clearly communicate the hierarchy among these goals to ensure that Superfund resources are properly directed to achieve the Agency's most important goals. **Recommendation 9: Adopt Shared Goals for Program Activities.** OSWER and the Office of Enforcement and Compliance Assurance (OECA) should consider adopting goals that cut across different Program activities (e.g., cleanup completions through use of any tool or combination of tools) to improve teamwork and gain full recognition for all work that produces similar outcomes.

**Action:** A document entitled, "Superfund Cleanup in the 21<sup>st</sup> Century," dated December 8, 2004, which establishes these goals, has been developed and approved by the Superfund Board of Directors as of December 2004. *(Complete)*

**Recommendation 59: Affirm Commitment to Cost Recovery.** Senior management within EPA and the U.S. Department of Justice (DOJ) should affirm their commitment to cost recovery.

**Action:** The Office of Site Remediation and Enforcement (OSRE) and DOJ will issue a joint memo reaffirming the importance of effective cost recovery in encouraging PRP-

lead responses, and in returning money to the Superfund Trust Fund where PRPs are recalcitrant or it is impracticable to get them to conduct response actions. (*OSRE*)

**Recommendation 64: Senior Managers Meet about Superfund Research Program.** The Assistant Administrators and/or Deputy Assistant Administrators for ORD and OSWER should meet with the Deputy Administrator no later than June 10, 2004, to discuss improvements both organizations intend to implement to improve the effectiveness of the Superfund research program. **Recommendation 63: Determine if Senior Managers' Actions are Effective.**

ORD, OSWER, and the Regions should work together to survey Superfund managers and RPMs by June 2005 to discover if the actions taken above [see study pages 77-81 for "actions taken above"] have addressed the Regional concerns regarding input into the Agency's research agenda and the value and utility of long-term research.

**Action:** These two recommendations are being addressed jointly. The overall goal of these actions is to ensure that research undertaken by ORD addresses the Program's highest priorities and that all levels of the Superfund Program Office better understand the applicability of ORD Superfund research. A number of actions are underway to address these recommendations. They include: establishing joint OSRTI/Regional subgroups to identify highest-priority research needs; surveying Regional managers and Remedial Project Managers (RPMs) to determine if coordination/communication efforts have been effective; and communicating ORD's approach to Superfund research needs to the Regions. In addition, the meeting identified as part of this recommendation took place prior to June 10, 2004. (*OSRTI and ORD*)

## 1.2 PROGRAM POLICY AND GUIDANCE

### **Background:**

The recommendations in this section address policy and guidance that must be revisited, and possibly revised or reissued, and highlights Programmatic areas that would benefit from new policy or guidance. While some recommendations address broad Programmatic policy—such as developing guidance for the One Cleanup Program—others apply to specific aspects of the Superfund Program, such as the Superfund Alternative Site (SAS) option. All of the recommendations are designed to ensure EPA is issuing the most timely and relevant direction possible.

Similar to the recommendations in the "Program Direction" section, the Study suggested that OSWER step up its leadership efforts to bring the One Cleanup Program to fruition, noting that more aggressive targets need to be established and communicated to realize the Program's goals.

The Study also noted that policy and procedure revisions or clarifications could help free up monies for remedial action work or other priorities. For instance, "immediate, one-time opportunities" were identified to gain access to funding from IAGs, grants and contracts; Superfund State Contracts (SSCs); and special accounts that then could be re-distributed, helping with the current shortfall being experienced for funding long-term cleanups. As stated in the

Study, the key to success in reviewing funds for possible deobligations are leadership by one office, partnerships across all offices and Regions, and a clear definition of expectations for managing and tracking these funds. A lack of leadership, partnerships, and expectations may lead to increasing amounts of “unused” funding.

Further, the Study recommends that EPA update its national policy related to SSCs to correct slow collections from States, allowing the Agency to use more appropriated money sooner for remedial actions: the most recent guidance for SSCs, “Classic Two-Party Superfund State Contract (SSC) Model Clauses,” was finalized in August 1990. This document primarily consists of model clauses for SSCs, and also includes guidance on such areas as cost sharing. Based on the varied interpretations among the Regions on SSCs and the age of the present guidance, OSWER should evaluate whether the document needs updating.

Other monetary benefits can be realized through the SAS approach. This approach reduces the need for EPA funding and saves time and energy otherwise required for site listing, while still promoting the cleanup of high-risk sites. However, the lack of uniform criteria and policy for SASs, and the lack of transparent site assessment and pre-scoring information, hinder the use and effectiveness of this approach. A national policy is needed to provide consistency across the Regions and to help promote use of the SAS approach.

Finally, the Study examined cost issues associated with use of the Removal Program, noting that current policy limits to \$6 million the amount of funding spent on a site under the Removal Program. This restriction may limit the scope of what EPA can accomplish quickly and efficiently at a site. There is also a reporting and “credit” gap between the Removal and Remedial Programs; for instance, when a removal at a site on the National Priorities List (NPL) addresses longer-term remediation goals, it is reported as a removal, and the dollars spent are not counted toward the totals spent for remedial actions. EPA needs to consider how the significance of this removal work can be tracked and accounted for better.

### **Recommendations and Actions:**

**Recommendation 6: Develop One Cleanup Program Policies/Guidance.** OSWER should promote the One Cleanup Program more aggressively and set more ambitious targets for policy and guidance development in order to continue to improve the coordination, speed, and effectiveness of cleanups.

**Action:** Work is ongoing that meets the goal of this recommendation. (*OSWER*)

**Recommendation 22: Update Deobligation Policies/Guidance.** OSWER and OECA should review guidance and policies [related to deobligations with IAGs/grants/contracts, SSCs, and special accounts] to ensure that they are addressing the current and future needs, and follow up with the Regions on using the guidance and policies. For example, the guidance on Superfund State Contracts is 14 years old and may need to be revisited to improve the timeliness of receipt, obligation, and expenditure of funds.

**Action:** No action will be taken against this recommendation. OSRE has reviewed all of its policies related to financial management and has an established deobligation policy and extramural resource distribution policy in place that have been accepted by the Regions. OSRE will be evaluating the need for additional Guidance related to special accounts management under recommendation 61. (*OSRTI and OSRE*)

**Recommendation 25: Revise SAS Policy.** OSWER should revise the SAS policy to ensure that criteria for being a Superfund Alternative Site are uniform and that the Regions provide the PRPs and other interested parties with transparent site assessment and pre-scoring information.

**Action:** This action is complete. The revised SAS guidance, which was finalized in June 2004, clarifies the criteria that SAS sites must meet, and encourages Regions to discuss site designations with PRPs prior to the start of negotiations. (*OSRTI*)

**Recommendation 32: Clarify Exemption Process.** Since some sites have high risks but do not require an extensive study, OSWER should clarify the process for obtaining an exemption to the current dollar limit for cleanups under removals, or recirculate the current guidance. *Option 1:* To capture the benefits of Removal Program activities, OSWER should consider developing new ways of tracking and reporting removal actions. This would include work that (1) speeds cleanups at NPL sites and (2) completes cleanup of a site that typically would be listed on the NPL. *Option 2:* OSWER should explore adopting a consistent national approach that encourages Regions to ask States for a 10 percent cost share for non-time-critical removals to ensure buy-in from States on priority cleanups and to conserve federal resources for use at other high-priority sites in the Region.

**Action:** OSRTI and the Office of Emergency Management (OEM) will clarify the process for obtaining an exemption to the current funding limit for cleanups under removals. (*OSRTI and OEM*)

**Recommendation 89: Update State Cost Share and Related Policies/Guidance.** OSWER should evaluate and update, if necessary, national policy on State cost share, payment policy and refund policy. If this guidance does not need to be updated, the 1990 guidance should be recirculated.

**Action:** The current process used by EPA to revise Subpart O provided an opportunity to review the functioning of the cost share policy, payment policy, and refund policy. In addition, funding constraints have prompted the Regions and Headquarters to re-examine current practices to apply excess funds to other sites or deobligate such funds for use in other States and Regions, and avoid “parking” funds with the States for use in future cleanups. (*OSRTI*)

**Recommendation/Option 104: Establish National Standards and Action Levels.** *Option:* Headquarters and the Regions should identify the five or ten contaminants most commonly encountered in soil and sediment at sites across the country in order to conserve resources and

utilize the experience and risk information developed since the inception of the Superfund Program.

**Action:** OSRTI agrees with the larger goal of promoting consistency from site-to-site and Region-to-Region with respect to both cleanup levels and action levels, and has developed several tools and policies to promote such consistency to the extent that it is advisable. However, one set of cleanup levels and one set of action levels applicable to all Superfund sites cannot be developed for several reasons. CERCLA cleanups must meet applicable or relevant and appropriate requirements (ARARs), or demonstrate that a CERCLA waiver of an ARAR is appropriate for that particular site remedy. Some ARARs flow from State regulations, which would be ARARs in that State, but not other States. Furthermore, some Federal ARARs are ARARs only in some circumstances while not in others. Therefore, cleanup levels which are based upon ARARs would not be cleanup levels for those sites where the requirement is not an ARAR. (*OSRTI*)

### **1.3 PERFORMANCE MEASUREMENT/ACCOUNTABILITY**

#### **Background:**

EPA uses both internal and external performance measures pursuant to the Government Performance and Results Act (GPRA) to document and evaluate the Superfund Program's progress and accomplishments, and to foster accountability. The Study reviewed these performance measures, and recommended specific areas for additional review and improvement, as well as areas where additional measures could be used to enhance the Program's performance.

Some of the new performance measures the Study recommended be developed are tied to higher-level leadership initiatives also suggested by the Study. For instance, following the recommendations that EPA clearly articulate a hierarchy of goals for the Superfund Program, and more aggressively promote the One Cleanup Program, the Agency should develop performance measures that are consistent with the newly prioritized goals and that encourage cleanup approaches to complement one another, respectively.

Some of the recommendations in this section address Regional performance. The Study suggested the need for Regionally-specific efficiency measures and enforcement measures to provide an accurate picture of successes and areas that need improvement in each Region, as opposed to the national targets that are the current focus of performance measures. As to the efficiency measures, the Program received funding from the Office of the Chief Financial Officer/Office of Policy, Economics and Innovation (OCFO/OPEI) Measures Development competition to identify potential efficiency measures, including long-term, annual, and Program management efficiency measures. A national efficiency measure for site specific charging has been adopted. After researching this issue on the Regional level, it was concluded that there should not be a definitive Regional percentage or goal for Superfund site charging. Please refer to Section 2.2.

Supporting the Study's objective of finding ways to get more money in the RA pipeline to help fund long-term cleanup efforts, the Study recommends new performance measures related to collecting funds under SSCs. These measures would support efforts to correct slow collections from States, and help correct the variations in how Regions manage SSCs. Developing new performance measures related to special accounts and cost recovery would also support the efficient flow of funding through the Program, making more funding available more quickly to address Program priorities.

Finally, the Study addresses the Program offices' "Superfund Performance Measures," those measures "relevant, for the most part, to achieving the goals of the Superfund Program." The Study looks at ways to improve upon those measures. For instance, the Study notes that as the objectives of ORD's Superfund research program are to reduce the cost of cleaning up Superfund sites; improve the efficiency of characterizing and remediating sites; and reduce the scientific uncertainties for improved decision making at Superfund sites, ORD could build upon these objectives and possibly develop results-oriented or even outcome-oriented measures. Specific examples given include setting a target of \$X in cleanup cost savings per year as a result of ORD's technical support, or applying a measure showing the reduced time and costs required to characterize or remediate sites as a result of implementing models or methodologies developed by ORD. OSWER could develop similar outcome-oriented measures for its technology innovation activities.

### **Recommendations and Actions:**

#### **Recommendation 3: Develop Performance Measures (PMs) Related to Hierarchy of Goals.**

OSWER and the lead Region should spearhead an effort to develop performance measures that are consistent with the newly articulated hierarchy of [Program] goals [related to Recommendation 2, wherein senior leadership would hone the Superfund Program's goals, more clearly articulate the relative priority among these goals, and allocate resources accordingly]. For example, if the Agency decides to count cleanups, no matter what the source, the performance measure should include NPL construction completions, Superfund Alternative Site completions, removal actions that complete all of the work at an NPL site, and voluntary cleanups.

**Action:** A work group is being assembled that will consider the hierarchy of the goals identified through Recommendation 2, and the range of performance measures across the Superfund Program to track progress toward these goals. (*OSWER*)

**Recommendation 7: Establish One Cleanup Program PMs.** OSWER and OECA should build upon their work to improve and strengthen performance measurement by establishing measures that encourage the various cleanup approaches to complement each other.

**Action:** No additional action will be taken against this recommendation as OECA/OSRE performance measures already include non-NPL/SAS sites. (*OSRTI*)

**Recommendation 8: National Program Managers (NPMs) adopt PMs.** All NPMs with Superfund resources should adopt and track a manageable number of meaningful performance measures and ensure data systems are in place to facilitate timely and accurate reporting.

**Action:** OSWER and the Budget, Planning, and Evaluation Branch (BPEB) of OSRTI will: (1) assemble a group of NPM representatives to evaluate the recommendation's feasibility and scope and choose issues for resolution; (2) prepare a white paper that outlines the steps needed to adopt (if necessary) and track performance measures and ensure the quality of data systems; (3) obtain senior management approval for any new measures or data coordination; and (4) prepare guidance outlining procedures for coordinating and tracking performance measures and ensuring data accuracy. (*OSWER and OSRTI*)

**Recommendation 57: Evaluate Enforcement PMs; Adopt Site-Specific PMs.** To improve individual regional performance, OECA and the lead Region should evaluate current enforcement measures and develop additional regional site-specific measures that provide a more accurate picture of the Program's success and provide an incentive to improve performance.

**Action:** OSRE discussed this issue with the Regions during the Cost Recovery Conference in FY 2004. It has been determined that working in conjunction with a work group conducting the management review under Recommendation 54, performance measures that address the "Enforcement First" policy at removal sites will be developed. In addition, a work group will be established to review the existing cost recovery GPRA performance measure and the existing return on investment program measure; write a summary of recommendations for the new cost recovery performance measures and return on investment program measures; and develop all necessary data element codes and definitions of accomplishment data for the new performance measure for CERCLIS tracking. (*OECA*)

**Recommendation 91: Establish SSC PMs.** OSWER and the Regions should work together to establish performance measures for SSCs, which could address the timeliness of collecting funds and returning excess funds to States.

**Action:** Providing State cost share is a statutory requirement. The SSC is the vehicle for implementing this action. EPA will not be establishing performance measures for SSCs, but instead will address the main issue raised in the report, which is States maintaining their commitment to pay for cost share under these tight budget situations. Long-term, this will be addressed under EPA's Superfund Post Construction Completion (PCC) Strategy for NPL sites. The PCC Strategy is a cohesive management framework of initiatives that is expected to provide greater assurance that Superfund remedies remain protective over the long term, to help States develop the capacity to assure Superfund State Cost Share, operations and maintenance (O&M), and methods to creatively finance both. The Agency expects to undertake the projects outlined in this strategy over the next five years. (*OSRTI*)



**Recommendation 100: Revise Superfund PMs.** ORD should continue their internal review and revise, where appropriate, their Superfund performance measures to become more Program results-oriented. Similarly, OSWER should examine the feasibility of developing outcome-oriented performance measures for its technology innovation activities.

**Action:** ORD will undertake a number of activities over the next year to ensure that its research reflects OSWER's highest-priority need, and that its performance becomes more results-oriented. These activities include: merging existing plans; conducting a progress review for OSWER; preparing for the Office of Management and Budget's (OMB) Performance Assessment Rating Tool (PART); and responding to recommendations. *(ORD)*

**Recommendation 102: Adopt New Superfund PMs.** EPA's management and support offices should meet with their Superfund response and enforcement clients to review current measures and possibly establish new performance measures specific to the Superfund Program, such as on special accounts and cost recovery in order to increase the Superfund Program's integration and efficiency.

**Action:** The Regions perform an annual reconciliation of special accounts data and report on the use of special accounts by States. Headquarters collects data through CERCLIS and quarterly reporting. There are currently five performance measures. OECA will determine if additional performance measures governing the use of special accounts are necessary. *(OECA)*

## **1.4 HOMELAND SECURITY/NATIONALLY SIGNIFICANT INCIDENTS**

### **Background:**

Much of the same workforce that responds to emergencies and oil spills and conducts time-critical and non-time-critical removals also supports important homeland security responsibilities. Some of the interviewees stated that On-Scene Coordinators (OSCs) are being pressed into action for Homeland Security preparedness and response activities, taking time away from classic emergency response and removal activities. The affected Regions also noted that when multiple events of national significance occur, the Removal Program in the affected Region virtually shuts down. In addition, there is an impact on the Removal Program nationwide as supporting Regions send OSCs to assist in staffing the events.

During this same time, five additional staff positions were given to each Region to compensate for the increased homeland security workload. While large national incidents have virtually depleted some Regions of their staff, much of the actual costs of the incidents have been reimbursed. (The costs of responding to the World Trade Center attacks, the Capitol anthrax problem, and the space shuttle *Columbia* disaster were all reimbursed). In recognition of this depletion of staff at the time of an event, the Regions have begun to develop a response corps that draws on the expertise in other programs (e.g., RPMs, RCRA corrective action staff, and

drinking water staff). Although contract money and additional staff have been provided to the Superfund Program for homeland security, the Regions have stated that they have not been funded adequately for the training, equipment, and travel needed for the response capability expected of the Agency as specified in the Federal Response Plan. EPA has to prepare for its expanding role in preparedness for counterterrorism response and homeland security through activities such as development of Continuity of Operation Plans and continuity of government functions.

### **Recommendations and Actions:**

**Recommendation 33: Address Homeland Security FTE Funding.** The Agency needs to find a permanent fix for the high-priority funding needed for the 50 homeland security FTE that the Regions were required to hire.

**Action:** This recommendation will be considered in the FY 2006 budget process.  
(OSWER/OEM and OCFO)

**Recommendation 34: Determine Additional Nationally Significant Incident Funding/Staff Needs.** As part of the next budget process, the Agency should evaluate whether, above and beyond the initial FTE, the Agency needs more dollars and FTE to address preparation for nationally significant incidents.

**Action:** This recommendation will be considered in the FY 2006 budget process.  
(OSWER/OEM and OCFO)

**Recommendation 35: Cross-Train Managers for Nationally Significant Incidents.** Building upon the development of the Regional Response Teams, OSWER and the Regions should support more cross training among OSCs, RPMs, and Site Assessment Managers (SAMs) to support removal efforts while OSCs are addressing nationally significant incidents.

**Action:** Several initiatives are underway to help address workload involved in managing incidents of national significance. Advanced Incident Command System (ICS) training and Incident Management Team (IMT) training will be provided to all Regions by December 2004. Initial training has been provided to the Response Support Corps for all Regions during FY 2004. In addition, the Program has ongoing work addressing issues of being prepared for multiple large-scale incidents. (OEM)